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9 **UNITED STATES DISTRICT COURT**

10 **NORTHERN DISTRICT OF CALIFORNIA**

11 **SAN JOSE DIVISION**

12

13 IN RE HIGH-TECH EMPLOYEE
14 ANTITRUST LITIGATION

15 THIS DOCUMENT RELATES TO:
16 ALL ACTIONS

Master Docket No. 11-CV-2509-LHK

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18 **DECLARATION OF LESLIE FITHIAN
IN SUPPORT OF DEFENDANTS' JOINT
RESPONSE TO PLAINTIFFS'
ADMINISTRATIVE MOTION TO FILE
UNDER SEAL FILINGS RELATED TO
PLAINTIFFS' OPPOSITION BRIEFS AND
FILINGS RE DKTS. 554, 556, 557, 559, 560,
561, 564, 570**

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1 I, Leslie Fithian, declare as follows:

2 1. I am Associate General Counsel at Apple Inc. (“Apple”). I have been employed in
 3 the Legal Department at Apple since 1994. Through my work at Apple, I have become familiar
 4 with Apple’s negotiations regarding its collaborative partnerships with outside companies. I
 5 make this declaration based on my own personal knowledge and experience at Apple. If called to
 6 testify as a witness, I could and would do so competently.

7 2. I submit this declaration in support of Defendants’ Joint Response to Plaintiffs’
 8 Administrative Motion to File Under Seal Filings Related to Plaintiffs’ Opposition Briefs and
 9 Filings Re Dkts. 554, 556, 557, 559, 560, 561, 564, 570 (“Defendants’ Response”), and in support
 10 of Apple’s request that certain materials lodged under seal with Plaintiffs’ motion be sealed
 11 pursuant to Civil Local Rule 79-5(d). In particular, Apple seeks to maintain under seal certain
 12 redacted portions of the following agreements with Adobe, Google, and Intel, which are attached
 13 to the Declaration of Dean M. Harvey in Support of Plaintiffs’ Opposition Briefs Re Dkts. 554,
 14 556, 557, 559, 560, 561, 564, 570 (“Harvey Decl.”) or Declaration of Lisa J. Cisneros in Support
 15 of Plaintiffs’ Opposition Briefs Re Dkts. 554, 556, 557, 559, 560, 561, 564, 570 (“Cisneros
 16 Decl.”), as reflected in the proposed redacted and highlighted versions of these agreements filed
 17 with Defendants’ Response:

- 18 • Harvey Decl. Ex. 48 (ADOBE_110060), Source Code Evaluation and Assistance
 19 Agreement between Apple and Adobe;
- 20 • Harvey Decl. Ex. 51 (ADOBE_110308), Master Agreement for Mutual Disclosure
 21 of Information, Amendments One and Two to Master Agreement for Mutual
 22 Disclosure of Information, First and Second Addenda to Master Agreement for
 23 Mutual Disclosure of Information, and attached Exhibits and Appendices between
 24 Apple and Adobe;
- 25 • Harvey Decl. Ex. 52 (ADOBE_110368), Agreement for Disclosure of Adobe
 26 Information and Assignment between Apple and Adobe;
- 27 • Harvey Decl. Ex. 53 (ADOBE_110398), Master Agreement for Mutual Disclosure
 28 of Information and attached Exhibits and Appendices between Apple and Adobe;

- Harvey Decl. Ex. 138 (GOOG-HIGH-TECH-00625631), Contact Sync License Agreement between Apple and Google;
- Harvey Decl. Ex. 139 (GOOG-HIGH-TECH-00625733), Cooperative Marketing and Services Agreement and attached Exhibits between Apple and Google;
- Cisneros Decl. Ex. 2249 (231APPLE132408), e-mail discussing and attaching Apple Computer, Inc. Confidentiality Agreement (Mutual) between Apple and Google; and
- Cisneros Decl. Ex. 2262 (231APPLE131775), e-mail discussing and negotiating the terms of the iPhone SDK Developer Terms between Apple and Google.

10 3. I have reviewed the redacted portions of these documents, and I believe there are
11 compelling reasons to maintain them under seal. These portions contain and reflect information
12 designated by Apple as CONFIDENTIAL – ATTORNEYS’ EYES ONLY under the Stipulated
13 Protective Order entered by the Court on January 24, 2012 (Dkt. 107).

14 4. Apple considers the terms and conditions of agreements such as these and the
15 details regarding their drafting and negotiation to be highly confidential, proprietary, and
16 competitively sensitive. Apple treats this information as highly confidential and sensitive and
17 does not disclose it publicly, to third parties, or even to most Apple employees. Apple limits the
18 disclosure of these agreements and the details regarding them to employees who require this
19 information to carry out their job duties. Apple derives an economic benefit from maintaining the
20 confidentiality of this information and would suffer serious competitive harm if it were disclosed
21 because Apple's competitors, potential business partners, and other third parties would gain
22 detailed information and insight into its confidential business strategies and partnerships,
23 including details about contractual terms and conditions that Apple uses with certain business
24 partners. Public disclosure of this information would put Apple at a significant disadvantage with
25 respect to its business dealings and partnerships.

26 5. Because the redacted portions of these documents cannot be publicly disclosed
27 without causing it serious harm, Apple requests that they be maintained under seal and redacted
28 from the publicly-filed versions of the documents.

1 I declare under penalty of perjury under the laws of the United States that the above is true
2 and correct.

3 Executed on February 21, 2014, in Sunnyvale, California.
4

5 By: /s/ Leslie Fithian
6 Leslie Fithian
7

8 **ATTESTATION**

9 Pursuant to Civil Local Rule 5-1, I attest that concurrence in the filing of this document
10 has been obtained from its signatory.

11 Dated: February 21, 2014 By: /s/ Christina Brown
12 Christina Brown
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